

SECOND REGULAR SESSION

HOUSE BILL NO. 1940

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BARNES.

6203H.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 287.902, 287.905, 287.907, 287.909, 287.910, 287.912, 287.915, 287.917, 287.919, and 287.920, RSMo, and to enact in lieu thereof one new section relating to the privatization of the Missouri employers mutual insurance company, with an effective date for certain sections.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 287.902, 287.905, 287.907, 287.909, 287.910, 287.912, 287.915, 287.917, 287.919, and 287.920, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 287.901, to read as follows:

287.901. 1. Before January 1, 2014, the board of directors of the Missouri employers mutual insurance company shall perform all acts necessary to establish a successor mutual insurance company. The successor mutual insurance company shall operate to the same extent as any mutual casualty insurer that is licensed and authorized to write insurance in this state, subject to the authority and regulation by the department of insurance pursuant to chapter 379, and with all the powers and subject to all the laws, rules, and requirements of a mutual insurance company that is organized under the laws of this state.

2. On or before January 1, 2013, the board of directors shall provide a report to the governor, the president pro tempore of the senate, and the speaker of the house of representatives that outlines the steps it will take to become a private successor mutual insurance company. The report shall also calculate the value, if any, of state equity or other state financial interests in the Missouri employers mutual insurance company. A copy of the report shall be provided to the secretary of state.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 **3. The board of directors shall perform all necessary acts to file articles of**
16 **incorporation of the successor mutual insurer corporation and shall take all necessary**
17 **actions to qualify for a certificate of authority as provided by law.**

18 **4. Beginning January 1, 2014, the successor mutual insurance company shall**
19 **become the successor in interest to all the assets and liabilities of the Missouri employers**
20 **mutual insurance company without any conveyance or transfer and without any further**
21 **act or deed and shall be vested by operation of law with title to all property of the Missouri**
22 **employers mutual insurance company. The successor mutual insurance company shall be**
23 **responsible for the obligations of the Missouri employers mutual insurance company to the**
24 **same extent as though incurred originally by the successor mutual insurance company.**
25 **The successor mutual insurance company shall not be an independent public corporation,**
26 **state agency, nor a public entity of this state. The successor mutual insurance company**
27 **shall not be called the "Missouri Employers Mutual Insurance Company" nor use the term**
28 **"state workers' compensation" or other similar terms in its new name or logo from and**
29 **after January 1, 2014.**

30 **5. Beginning January 1, 2014, the successor mutual insurance company shall be**
31 **subject to all provisions of the statutes which relate to the private insurance carriers and**
32 **to the jurisdiction of the department of insurance, financial institutions and professional**
33 **registration.**

34 **6. The director of the department of insurance, financial institutions and**
35 **professional registration is authorized to supervise the Missouri employers mutual**
36 **insurance company's transition into a private successor mutual insurance company. The**
37 **director is authorized to promulgate rules and regulations to implement the provisions of**
38 **this section. Any rule or portion of a rule, as that term is defined in section 536.010 that**
39 **is created under the authority delegated in this section shall become effective only if it**
40 **complies with and is subject to all of the provisions of chapter 536, and, if applicable,**
41 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
42 **vested with the general assembly pursuant to chapter 536, to review, to delay the effective**
43 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
44 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2012,**
45 **shall be invalid and void.**

2 [287.902. The "Missouri Employers Mutual Insurance Company" is
3 created as an independent public corporation for the purpose of insuring Missouri
4 employers against liability for workers' compensation, occupational disease and
5 employers' liability coverage. The company shall be organized and operated as
6 a domestic mutual insurance company and it shall not be a state agency. The
company shall have the powers granted a general not-for-profit corporation

7 pursuant to section 355.090 to the extent the provisions of such section do not
8 conflict with the provisions of sections 287.900 to 287.920. The company shall
9 be a member of the Missouri property and casualty guaranty association, sections
10 375.771 to 375.779, and as such will be subject to assessments therefrom, and the
11 members of such association shall bear responsibility in the event of the
12 insolvency of the company. The company shall be established pursuant to the
13 provisions of sections 287.900 to 287.920. Preference shall be given to Missouri
14 employers that develop an annual premium of not greater than ten thousand
15 dollars. The company shall use flexibility and experimentation in the
16 development of types of policies and coverages offered to employers, subject to
17 the approval of the director of the department of insurance, financial institutions
18 and professional registration.]
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2 [287.905. 1. There is created a board of directors for the company. The
3 board shall be appointed by January 1, 1994, and shall consist of five members
4 appointed or selected as provided in this section. The governor shall appoint the
5 initial five members of the board with the advice and consent of the senate. Each
6 director shall serve a five-year term. Terms shall be staggered so that no more
7 than one director's term expires each year on the first day of July. The five
8 directors initially appointed by the governor shall determine their initial terms by
9 lot. At the expiration of the term of any member of the board, the company's
10 policyholders shall elect a new director in accordance with provisions determined
11 by the board.

12 2. Any person may be a director who:

13 (1) Does not have any interest as a stockholder, employee, attorney,
14 agent, broker or contractor of an insurance entity who writes workers'
15 compensation insurance or whose affiliates write workers' compensation
16 insurance; and

17 (2) Is of good moral character and who has never pleaded guilty to, or
18 been found guilty of, a felony.

19 3. The board shall annually elect a chairman and any other officers it
20 deems necessary for the performance of its duties. Board committees and
21 subcommittees may also be formed.]

2 [287.907. 1. By March 1, 1994, the board shall hire an administrator who
3 shall serve at the pleasure of the board and the company shall be fully prepared
4 to be operational by March 1, 1995, and assume its responsibilities pursuant to
5 sections 287.900 to 287.920. The administrator shall receive compensation as
6 established by the board and must have proven successful experience as an
7 executive at the general management level in the insurance business.

8 2. The board is vested with full power, authority and jurisdiction over the
9 company. The board may perform all acts necessary or convenient in the
administration of the company or in connection with the insurance business to be

10 carried on by the company. In this regard, the board is empowered to function
11 in all aspects as a governing body of a private insurance carrier.]
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[287.909. 1. The administrator of the company shall act as the company's
2 chief executive officer. The administrator shall be in charge of the day-to-day
3 operations and management of the company.

4 2. Before entering the duties of office, the administrator shall give an
5 official bond in an amount and with sureties approved by the board. The
6 premium for the bond shall be paid by the company.

7 3. The administrator or his designee shall be the custodian of the moneys
8 of the company and all premiums, deposits or other moneys paid thereto shall be
9 deposited with a financial institution as designated by the administrator.

10 4. No board member, officer or employee of the company is liable in a
11 private capacity for any act performed or obligation entered into when done in
12 good faith, without intent to defraud, and in an official capacity in connection
13 with the administration, management or conduct of the company or affairs
14 relating to it.]
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[287.910. The board shall have full power and authority to establish rates
2 to be charged by the company for insurance. The board shall contract for the
3 services of or hire an independent actuary, a member in good standing with the
4 American Academy of Actuaries, to develop and recommend actuarially sound
5 rates. Rates shall be set at amounts sufficient, when invested, to carry all claims
6 to maturity, meet the reasonable expenses of conducting the business of the
7 company and maintain a reasonable surplus. The company shall conduct a
8 workers' compensation program that shall be neither more nor less than
9 self-supporting.]
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[287.912. The board shall formulate and adopt an investment policy and
2 supervise the investment activities of the company. The administrator may invest
3 and reinvest the surplus or reserves of the company subject to the limitations
4 imposed on domestic insurance companies by state law. The company may retain
5 an independent investment counsel. The board shall periodically review and
6 appraise the investment strategy being followed and the effectiveness of such
7 services. Any investment counsel retained or hired shall periodically report to the
8 board on investment results and related matters.]
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[287.915. Any insurance agent or broker licensed to sell workers'
2 compensation insurance in this state shall be authorized to sell insurance policies
3 for the company in compliance with the bylaws adopted by the company. The
4 board shall establish a schedule of commissions to pay for the services of the
5 agent.]

[287.917. 1. The administrator shall formulate, implement and monitor a workplace safety program for all policyholders.

2. The company shall have representatives whose sole purpose is to develop, with policyholders, a written workplace accident and injury reduction plan that promotes safe working conditions and which is based upon clearly stated goals and objectives. Company representatives shall have reasonable access to the premises of any policyholder or applicant during regular working hours. The company shall communicate the importance of a well-defined safety plan and assist in any way to obtain this objective.

3. The administrator or board may refuse to insure, or may terminate the insurance of any subscriber who refuses to permit on-site examinations or disregards the workplace accident and injury reduction plan.

4. Upon the completion of a detailed inspection and recognition of a high regard for employee work safety, a deviation may be applied to the rate structure of that insured noting special recognition of those efforts.]

[287.919. 1. The Missouri employers mutual insurance company shall not receive any state appropriation, directly or indirectly, except as provided in section 287.690.

2. In order to provide funds for the creation, continued development and operation of the company, the board is authorized to issue revenue bonds from time to time, in a principal amount outstanding not to exceed forty million dollars at any given time, payable solely from premiums received from insurance policies and other revenues generated by the company.

3. The board may issue bonds to refund other bonds issued pursuant to this section.

4. The bonds shall have a maturity of no more than ten years from the date of issuance. The board shall determine all other terms, covenants and conditions of the bonds, except that no bonds may be redeemed prior to maturity unless the company has established adequate reserves for the risks it has insured.

5. The bonds shall be executed with the manual or facsimile signature of the administrator or the chairman of the board and attested by another member of the board. The bonds may bear the seal, if any, of the company.

6. The proceeds of the bonds and the earnings on those proceeds shall be used by the board for the development and operation of the Missouri employers mutual insurance company, to pay expenses incurred in the preparation, issuance and sale of the bonds and to pay any obligations relating to the bonds and the proceeds of the bonds under the United States Internal Revenue Code of 1986, as amended.

7. The bonds may be sold at a public sale or a private sale. If the bonds are sold at a public sale, the notice of sale and other procedures for the sale shall be determined by the administrator or the company.

27 8. This section is full authority for the issuance and sale of the bonds and
28 the bonds shall not be invalid for any irregularity or defect in the proceedings for
29 their issuance and sale and shall be incontestable in the hands of bona fide
30 purchasers or holders of the bonds for value.

31 9. An amount of money from the sources specified in subsection 2 of this
32 section sufficient to pay the principal of and any interest on the bonds as they
33 become due each year shall be set aside and is hereby pledged for the payment
34 of the principal and interest on the bonds.

35 10. The bonds shall be legal investments for any person or board charged
36 with the investment of public funds and may be accepted as security for any
37 deposit of public money, and the bonds and interest thereon are exempt from
38 taxation by the state and any political subdivision or agency of the state.

39 11. The bonds shall be payable by the company, which shall keep a
40 complete record relating to the payment of the bonds.

41 12. Not more than fifty percent of the bonds sold shall be sold to public
42 entities.]

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2 [287.920. 1. The board shall cause an annual audit of the books of
3 accounts, funds and securities of the company to be made by a competent and
4 independent firm of certified public accountants, the cost of the audit to be
5 charged against the company. A copy of the audit report shall be filed with the
6 director of the department of insurance, financial institutions and professional
7 registration and the administrator. The audit shall be open to the public for
8 inspection.

9 2. The board shall submit an annual independently audited report in
10 accordance with procedures governing annual reports adopted by the National
11 Association of Insurance Commissioners by March first of each year and the
12 report shall be delivered to the governor and the general assembly and shall
13 indicate the business done by the company during the previous year and contain
14 a statement of the resources and liabilities of the company.

15 3. The administrator shall annually submit to the board for its approval
16 an estimated budget of the entire expense of administering the company for the
17 succeeding calendar year having due regard to the business interests and contract
18 obligations of the company.

19 4. The incurred loss experience and expense of the company shall be
20 ascertained each year to include but not be limited to estimates of outstanding
21 liabilities for claims reported to the company but not yet paid and liabilities for
22 claims arising from injuries which have occurred but have not yet been reported
23 to the company. If there is an excess of assets over liabilities, necessary reserves
24 and a reasonable surplus for the catastrophe hazard, then a cash dividend may be
25 declared or a credit allowed to an employer who has been insured with the
26 company in accordance with criteria approved by the board, which may account
for the employer's safety record and performance.

27 5. The department of insurance, financial institutions and professional
28 registration shall conduct an examination of the company in the manner and
29 under the conditions provided by the statutes of the insurance code for the
30 examination of insurance carriers. The board shall pay the cost of the
31 examination as an expense of the company. The company is subject to all
32 provisions of the statutes which relate to private insurance carriers and to the
33 jurisdiction of the department of insurance, financial institutions and professional
34 registration in the same manner as private insurance carriers, except as provided
35 by the director.

36 6. For the purpose of ascertaining the correctness of the amount of
37 payroll reported, the number of employees on the employer's payroll and for such
38 other information as the administrator may require in the proper administration
39 of the company, the records and payrolls of each employer insured by the
40 company shall always be open to inspection by the administrator or his duly
41 authorized agent or representative.

42 7. Every employer provided insurance coverage by the company, upon
43 complying with the underwriting standards adopted by the company, and upon
44 completing the application form prescribed by the company, shall be furnished
45 with a policy showing the date on which the insurance becomes effective.]
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Section B. The repeal of sections 287.902, 287.905, 287.907, 287.909, 287.910, 287.912,
2 287.915, 287.917, 287.919, and 287.920 shall become effective January 1, 2014.

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